IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 104 OF 1989

The Commissioner of Income-tax,
Bombay City-III, Bombay. ...Applicant

V/s.

Freyssinet Prestressed Concrete
Co.Ltd. ...Respondent

Mr.Ashok Kotangle for Applicant.
Ms.Asifa Khan for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 5, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court :-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to investment allowance u/s.32A in respect of the plant and machinery not used by the company (assessee) but leased to contractors who had used the said plant and machinery in their

business of construction of bridges etc.?

2. Whether the Tribunal was right in holding that the appeal against levy of interest u/s.217 was tenable since this ground had been raised along with another appealable ground arising out of the assessment order ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that payment of Rs.82,000/- made on 23.3.1981 along with the estimate of advance tax filed on that day u/s.209A(4) was eligible to be given credit to in computing the tax outstanding for the purpose of sec.217 ?"

. So far as the first question is concerned, it is covered by judgment of the Apex Court in the case of **Commissioner of Income-Tax V/s. Shaan Finance (P) Ltd. (1998) 231 ITR 308** wherein the Apex Court was pleased to hold that assessee would be entitled to investment allowance in respect of machinery not used by the

company. Accordingly, the first question is answered in favour of the assessee and against the revenue.

. So far as second and third questions are concerned, same are not pressed by the learned Counsel for the revenue. In this view of the matter, reference, accordingly stands disposed of with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**